



CHAIRMAN

S. 782, 91st C.
UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

July 1, 1970

Honorable David N. Henderson
Chairman, Subcommittee on Manpower
and Civil Service
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

This is in response to your request to submit the views of the Civil Service Commission on S. 782 which passed the Senate on May 19, 1970.

S. 782 is a bill "To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy". While the Commission agrees fully with the purpose of S. 782 as expressed in its title, the bill has provisions which would adversely affect the effective operation of the executive branch and to which we strongly object. This report discusses the two major faults in the proposed legislation. Other provisions of the bill which we feel need clarification or improvement are discussed in the appendix to this report.

The two major faults in the bill are the provisions that would (1) establish a new executive agency, "The Board on Employees' Rights" (referred to herein as the "Board") and (2) allow summary recourse to the Federal courts without the exhaustion of any administrative remedy.

Establishment of the Board

The establishment of the Board would be a retrogressive step not in keeping with present-day efforts to maintain a positive, cooperative atmosphere in the area of employee-management relations. Management in the Federal service is trained to deal fairly and cooperatively with employees and labor organizations. The creation of a separate agency for the exclusive purpose of hearing a limited number of employee grievances, with authority to direct disciplinary action against managers and supervisors, would change the present cooperative atmosphere to a litigious one. We believe the existence of the Board would emphasize adversary attitudes which is a negative approach totally at odds with the present positive policy of seeking employee-management cooperation.

§ 2 makes applicable to the Civil Service Commission the various prohibitions set forth in section 1 which are applicable between the departments and agencies and the employees in, and applicants for positions in, those departments and agencies. The Commission has no objection to this section provided the other amendments suggested herein are made.

§ 3 makes applicable to commissioned officers of the armed forces, and to members of the armed forces acting under an officer's authority, the various prohibitions set forth in section 1. We do not object to this section.

§§ 4 and 5 are, as indicated in the body of our report, completely unacceptable to the Civil Service Commission. There are several alternatives to these sections that would not be objectionable. One would be to delete these sections and let the bill operate within the present executive branch grievance and appellate systems. In other words, the various actions made unlawful by section 1 of the bill would constitute valid bases for a grievance or an appeal under existing procedures. Another would be to create a statutory board within the Civil Service Commission to resolve all grievances, including those referred to in section 1 of S. 782. Also the Commission would not oppose a provision giving access to the courts if it first required the exhaustion of any available administrative remedy and if the defendant is the Government rather than an official of the Government. The Commission's staff will be glad to cooperate in preparing whatever type of legislation the Subcommittee considers appropriate in lieu of sections 4 and 5.

§§ 6, 7, 8, and 9 provide exceptions from all or portions of S. 782 for the Federal Bureau of Investigation, the Central Intelligence Agency, and the National Security Agency. The Commission has no objection to these sections. We do, however, urge that the Subcommittee give careful consideration to the additional exceptions needed in the interests of national security which are referred to in the reports on S. 782 submitted by the Department of State and the Department of Defense.

§ 10 is covered by the objections we have made to sections 4 and 5. Section 10 merely states that an agency may have a grievance procedure to enforce the bill, but that an employee need not use that procedure if he prefers to go directly to court or to the Board on Employees' Rights.

§ 11 is the usual separability provision to which we have no objection.